

WOODROW WILSON REHABILITATION CENTER POLICIES AND PROCEDURES	
Title: <b>CLIENT APPEAL SYSTEM</b>	
Policy Number: <b>4.41</b>	
Effective Date: <b>12/12/91</b>	Page <b>1</b> of <b>10</b>
Lead Department: <b>COUNSELING DIVISION</b>	

## **OBJECTIVE**

To provide clear information and guidance to consumers wishing to appeal decisions affecting their WWRC program and to offer the consumer, WWRC and DRS the opportunity to reconsider planned actions and pending decisions regarding the consumer's comprehensive Rehabilitative Program options in compliance with the Field Rehabilitation Services Manual, Chapter 15, the Federal Rehabilitation Act of 1973 as amended and the Code of Virginia 51.5-22 and 51.5-29.

## **POLICY**

It is DRS and WWRC Policy to comply with State and Federal Regulations, which provide for informed choices regarding programs and services and in those instances where issues are not readily resolved, to use the Consumer Appeals System to provide for resolutions that are fair to both the consumer and the Agency. The appeals system can:

- Provide solutions that are consistent with Federal and State Regulations and Agency Policy.
- Result in clarification of policy for the consumer and Agency staff.
- Identify policies that impede client success and need to be changed.

## **Consumers Right to Appeal**

There are four (4) avenues available to consumers to pursue to resolve issues. They are:

- Request an informal administrative review or proceed directly to a formal hearing or pursue both approaches simultaneously. Federal Regulations [34CFR, PART 361.48(6)] state that the informal administrative review may not be used as a means to delay a hearing unless the parties jointly agree to a delay.
- The consumer or counselor, individually or jointly, may request the no-cost advocacy or mediation services of the Virginia Office of Protection and Advocacy submit a hearing request in writing within 60 calendar days from the date the through their Client Assistance Program, whether or not the consumer chooses to request an informal administrative review or a hearing or request assistance from the DRS Constituent Services Facilitator. To ensure that we serve the consumer appropriately and address disputes promptly, it is agency policy that the consumer,

Client and counselor determine they can not reach a mutually acceptable decision, including a decision of an informal administrative review. Once the consumer requests a hearing, the consumer or counselor may still access the informal administrative review and/or Client Assistance Program concurrently with a hearing. However, a pending hearing may pose a potential conflict of interest for the agency's consumer services facilitator and that person should not be/remain involved under these circumstances.

- The avenues of invoking the Client Assistant Program, DRS Constituent Services Facilitator and/or an informal administrative review 1) are not prerequisites for a hearing 2) may be accessed concurrently with a hearing and 3) may not be used to delay a hearing unless the parties jointly agree to a delay.
- Under Federal Regulations [34 CFR 361.48 (c) (2) (I)], the hearing must be conducted within 45 calendar days of the date any DRS Office (or WWRC) receives the request.

### **Requesting Assistance**

To help the consumer, counselor, and others involved in resolving the matter fully understand the issues, the request, regardless of which avenue is selected, should include:

- a. action/decision consumer desires and rationale,
- b. action/decision counselor or other staff member desires and rationale,
- c. Other information that may help the people involved in resolving the issue to understand history of the case and the unresolved issue.

Whenever the consumer, counselor or other staff member accesses the consumer appeals system, that person should let the other one know and provide a copy if the request was submitted in writing. To ensure the consumer file is complete, the counselor shall **document the request in the case notes.**

### **Consumer Notification of Right to Appeal**

Clients shall be notified of the Right to Appeal, the alternatives available and the external assistance available i.e. Client Assistance Program and Constituent Services Facilitator during New Student Orientation and during the initial interview with the case manager. Also, should a dispute arise in the course of the rehabilitation program, the case manager will review with the individual the avenues for resolution and the means to access them.

### **Basis for Appeal**

Decisions a consumer may wish to have reviewed include, but are not limited to, issues regarding:

1. Applicant eligibility for services.
2. Client eligibility for further services.
3. Elements of the IPE, including the client's vocational goal and specific services.
4. Delivery/quality of service(s) received.
5. Cost of services.
6. Case closure.
7. Decision resulting from an informal administrative review.

### **Informal Administrative Review**

The informal administrative review is an informal opportunity for the consumer, counselor or other staff member to request that a supervisor review disputed issues and work with the consumer, counselor and/or staff member to arrive at a satisfactory solution.

The consumer, counselor or staff member may contact the supervisor orally or in writing.

1. The supervisor's goal is to help the consumer; counselor and or other staff member resolve the issue fairly and promptly (within ten calendar days).

The supervisor will wish to become familiar with the case history; talk with the consumer and staff members involved to clarify the issues and understand the consumer's, and staff desired action and rationale; talk with other appropriate people; and review relevant law and regulations and agency policies and procedures.

The supervisor provides the consumer (or consumer's representative) an opportunity to present additional relevant information. The consumer may present this information either in writing or orally, whichever the consumer prefers.

The supervisor discusses with the consumer other avenues within the client appeals system that the consumer has not accessed yet.

The supervisor helps the consumer, counselor and/or other staff members to understand all the factors involved in the matter and reach a decision that is acceptable to the consumer and consistent with state and federal law, regulations, and agency policy.

2. If the consumer, counselor and/or other staff member cannot reach an acceptable solution with the supervisor's assistance within ten (10) calendar days, but the consumer agrees that process is being made, the supervisor may continue to work with them towards a resolution.

If, after ten (10) calendar days, the consumer feels that no progress has been made, the supervisor will make a decision which resolves the issue in a manner that is acceptable to the consumer and consistent with state and federal law and regulations and agency policy. The supervisor tries to ensure the consumer and counselor understands the rationale for the decision, including law, regulations and policies which support the decision.

3. The supervisor prepares a written record of the review. It includes the initial request, factors considered, the rationale for the outcome, and the actual outcome.

In the written record, the supervisor notifies the consumer of his or her right to request a hearing (request must be in writing) if the consumer is dissatisfied with the outcome. The supervisor shall offer to assist the consumer prepare a written request or may direct the counselor to offer such assistance.

4. The supervisor gives a copy of the written record to
  - consumer (and consumer's representative, if the consumer has one)
  - counselor
  - other appropriate people

### **Hearing Process**

The hearing process provides the consumer and DRS or WWRC an opportunity to present testimony and other evidence, which support their position to an impartial hearing officer who presides over the process. The process includes:

- a. Pre-hearing considerations, including any pre-hearing conference,
- b. Hearing,
- c. Hearing officer's decision, and
- d. DRS Commissioner's option to review the decision.

The hearing may be conducted “on the written record” (i.e. without oral testimony) at the consumer’s request if the hearing officer approves. The hearing officer shall approve such a request if he or she believes that it will not impede identification of all relevant evidence, policy and regulations.

The 1993 reauthorized Rehabilitation Act provides qualification guidelines for hearing officers. In general, a hearing officer must be impartial. The hearing officer is not a DRS employee and is randomly selected from a pool of qualified hearing officers.

Please refer to the DRS Hearing Officer Manual for a complete description.

During the hearing process the consumer shall have the following rights:

1. A hearing conducted within 45 calendar days of the date any DRS officer (or WWRC) receives the written request. This complies with federal regulations [34 CFR 361.48 (c) (2) (I)].
2. Request at any time, and be provided, necessary and reasonable accommodations regarding accessibility at the hearing.
3. Be present at the hearing and have an opportunity to obtain representation from an attorney or other advocate (at the consumer’s expense) at any time throughout the hearing process. This complies with federal regulations [34 CFR 361.48 (c) (2) (ii)]. Have an opportunity to apply for no-cost advocacy or mediation services from the Virginia Office of Protection and Advocacy through their Client Assistance Program. [Rehabilitation Act of 1973, as amended, Sections 20 and 112].
4. Pending a final hearing decision, continue to receive all services planned/authorized in the IWRP and begun, even if those services are at issue in the hearing. This complies with the 1993 reauthorized Rehabilitation Act [Title I, Part A, Section 102 (d) (5)].

Unless the consumer (or if appropriate, the authorized representative) so requests, pending a final hearing decision, DRS shall not institute a suspension, reduction, or termination of services being provided under the IPE unless:

- a. such services have not yet begun, or
- b. such services are contraindicated by new medical or psychological information obtained by DRS; or
- c. such services were clearly (through documented evidence) obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the consumer; or

- d. DRS staff consider the consumer's behavior/actions to be a danger to the health or safety of the consumer or others, such as when Woodrow Wilson Rehabilitation Center 1) dismisses a consumer as a result of a Standards of Conduct disciplinary action or 2) immediately dismisses a consumer whose presence is a threat to the health and safety of the consumer or others.
5. Prior to the hearing date, review the case file, including the counselor's case notes and information in the file which were generated by agencies other than DRS as allowed by DRS Policy **1-5 Protection, Exchange, and Release of Client Personal Information, subsection Part II. C., and WWRC Policy 5.02, Client Review of Own Record.**
6. Request the disqualification of a hearing officer assigned to the case. It is agency policy that the request explains the consumer's reason(s) and be submitted in writing to the hearing officer assigned to the case for a ruling.
7. Request the hearing officer use an open hearing format. Otherwise, the hearing will be closed to everyone except the principals involved. The hearing officer shall rule on the request.
8. Request a hearing "on the written record" (i.e. without oral testimony). The hearing officer shall rule on the request.
9. Request, upon good reason, that the hearing and any pre-hearing conference be moved to a specified location. Otherwise, the proceedings shall be held at the local DRS office or Woodrow Wilson Rehabilitation Center. The hearing officer shall rule on the request.
10. When the hearing is conducted more than ten- (10) miles from the consumer's home, request reimbursement from DRS for consumer's mileage in excess of ten (10) miles. Reimbursement shall be at the DRS prevailing mileage rate for clients.
11. Prior to the hearing, elect to precede or follow DRS in the opening statement; presentation of testimony and evidence; and the closing statement.
12. Request a free copy of the tape recording of the hearing. If the consumer wishes to have the tape transcribed, the consumer shall arrange for it at the consumer's expense. However, DRS will pay for reasonable accommodation, such as transcribing the audiotape, for consumers with hearing impairments.
13. Submit additional written information to the DRS Commissioner if the Commissioner chooses to review the hearing officer's decision. This complies with federal regulations [34 CFR 361.48 (c) (2) (vii)].

Both the consumer and DRS shall have the following rights during the hearing process:

1. Request a pre-hearing conference. A conference may be necessary to define issues and discuss the hearing format and other matters. The hearing officer shall rule on the request.
2. Submit documentary evidence prior to, as well as during, the hearing. During the hearing, call witnesses to present testimony (however, it is agency policy that the consumer must bear any costs associated with witnesses other than DRS employees), make any pertinent arguments, question any witnesses, refute or question any testimony or evidence, and object to the relevance of testimony or evidence. This complies with federal regulations [34 CFR 361.48 (c) (2) (ii)].
3. Following the hearing, submit additional written evidence and/or a written presentation of the findings and conclusions that are supported by the hearing evidence. The hearing officer shall consider it in formulating a final decision. This complies with federal regulations [34 CFR 361.48 (c) (2) (ii)]. It is agency policy that this must be submitted 1) within seven (7) calendar days from the hearing date to allow sufficient time for the hearing officer to review it, and 2) in writing, to avoid opportunities for one party to communicate with the hearing officer without the other party present.
4. Request the hearing officer grant an extension of time when postponement of the hearing will clearly advance the fair presentation or resolution of disputed issues. The hearing officer shall rule on the request. This complies with federal regulations [34 CFR 361.48 (d)].

It is agency policy that all hearing requests be submitted in writing so it can be given to the hearing officer to be selected. Staff who receive a verbal request from a consumer shall offer to assist the consumer prepare a written request. All consumer requests for a hearing shall be presented on a complete **Request of Hearing form (RS-9) or letter containing similar information**, whichever format the consumer prefers.

The request shall specify the:

- a. planned action or pending decision consumer desires and rationale, and
- b. planned action or decision counselor desires and rationale, and
- c. other information pertinent to the unresolved issue, and
- d. date the request was received.

The staff person immediately forwards it to:

Hearing Coordinator  
DRS Central Office

To protect the impartiality of the hearing officer, staff shall not discuss substantive issues with the hearing officer “off the record” and outside the proceedings. Discussions concerning hearing format, site, and date are not regarded as substantive.

The hearing coordinator oversees the hearing process. This includes developing and training a pool of qualified hearing officers; maintaining proper documentation in the client’s hearing file, notifying the consumer in writing of the hearing officer randomly selected to conduct the hearing and the consumer’s right to obtain representation; arranging any reasonable accommodation regarding accessibility; distributing a copy of the hearing officer decision to appropriate DRS staff; and providing a copy of the taped recording of the hearing if the consumer requests one.

Please refer to the DRS Hearing Officer Manual for a complete description of these and other responsibilities.

The Regional Director or WWRC Program Director:

1. Reviews the evidence, rationale, and pertinent policies with the counselor and supervisor, and as appropriate, the Deputy Commissioner. Jointly determines the agency’s findings on the hearing issue(s).
2. Determines which agency staff will present information on the agency’s behalf, arranges for the appearance at the hearing, and so notifies the consumer and hearing officer. If deemed appropriate by the counselor and supervisor, the counselor may present the agency’s case. The counselor would not be an appropriate staff member to present the agency’s case where there appears to be a conflict of interest. Examples include when it may not benefit the consumer-counselor relationship after the hearing or when the supervisor does not approve a service that was agreed upon by the counselor and consumer.
3. Arranges for the appearance at the hearing of all agency staff requested to appear by the consumer or hearing officer.
4. Releases a copy of the case file materials to the consumer, if the consumer requests it, or consumer’s representative, if the consumer has authorized it release. Refer to DRS Policy 1-5, Protection, Exchange, and Release of Client Personal Information and WWRC Policy 5.02.



5. Gives the consumer (and consumer's representative, if there is one) a copy of all written statements DRS provides to the hearing officer. Notes on hearing officer's copy that the consumer (or consumer's representative) was sent a copy.
6. Does not discuss substantive issues with the hearing officer "off the record" and outside the proceedings. Discussions concerning hearing format, site, and date are not regarded as substantive.
7. The Regional Director or WWRC Program Director may:
  - a. Explore the informal administrative review option (conducted concurrently during the hearing process) with the consumer as an additional avenue to try to resolve the issue.
  - b. Offer to negotiate with the consumer prior to the hearing.
  - c. Meet with agency staff to review letters relevant to the case.
  - d. Request that the hearing officer conduct a pre-hearing conference.
  - e. Prepare a written brief of the agency's position and submit documentary evidence prior to the hearing (supplementary to any previous written explanations).

Prior to the hearing, the hearing officer:

1. Schedules and conducts the hearing within 45 calendar days of the date any DRS officer (or WWRC) received the hearing request [34 CFR 361.48 (c) (2) (I)].
2. Notifies the consumer of his or her rights [34 CFR 361.48 (c) (2) (ii)].
3. Directs the consumer and DRS personnel, but not others, to appear at the hearing and any pre-hearing conference.
4. The hearing officer does not have authority to settle cases without a hearing.
5. Following the hearing, the hearing officer renders a full written report of the findings and grounds for the decision, to the consumer and DRS Commissioner within 30 calendar days of the hearing [34 CFR 361.48 (c) (2) (iii)]. It is agency policy that the hearing officer shall send the report to:

- the consumer **via certified mail**, (or consumer's parents if the consumer is a minor child), and
- the consumer's representative, including representative(s) from the Virginia Office of Protection and Advocacy, if there is one, and
- The DRS Commissioner via the hearing coordinator.
- The hearing coordinator shall forward a copy of the report to the:
- Regional Director or WWRC Program Director,
- counselor's supervisor,
- counselor, and
- appropriate members of the Statewide Rehabilitation Advisory Council (with the names of all participants blanked out of the report) [Rehabilitation Act of 1973, as amended, Title I, Section 101(a) (36) (iv) (III)]. 0.

**Assistance Available to Client**

Virginia Office for Protection and Advocacy  
202 North 9th Street, 9th Floor  
Richmond, VA 23219  
1-800-552-3962 (toll free) or 804-225-2042 (Voice or TTY)

or

Department of Rehabilitative Services  
Constituent Services Facilitator  
8004 Franklin Farms Road  
Richmond, VA 23288-0300  
1-800-552-5019

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